
HOUSE BILL No. 1484

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10.2-9; IC 5-10.3-5-3; IC 5-10.4-3-10.

Synopsis: Sudan divestment. Requires the public employee's retirement fund (PERF) and the Indiana state teachers' retirement fund (TRF) to contact, in the capacity of shareholders, companies with certain business activities in Sudan, and request that the companies cease those business activities. Prohibits PERF and TRF from investing in those companies that are unresponsive to the requests. Provides that PERF and TRF are required to sell or transfer any investments in a company that is unresponsive to the requests. Requires PERF and TRF to report any investments with a company with business operations in Sudan to the general assembly.

Effective: July 1, 2007.

Noe, Pierce

January 23, 2007, read first time and referred to Committee on Interstate and International Cooperation.

C
o
p
y



First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1484

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-10.2-9 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]:
4 **Chapter 9. Sudan Divestment**
5 **Sec. 1. As used in this chapter, "active business operations"**
6 **means all business operations that are not inactive business**
7 **operations.**
8 **Sec. 2. As used in this chapter, "business operations" means**
9 **engaging in any commerce in any form in Sudan.**
10 **Sec. 3. As used in this chapter, "company" means any of the**
11 **following:**
12 **(1) A sole proprietorship.**
13 **(2) An organization.**
14 **(3) An association.**
15 **(4) A corporation.**
16 **(5) A partnership.**
17 **(6) A joint venture.**



C
o
p
y

- (7) A limited partnership.
- (8) A limited liability partnership.
- (9) A limited liability company.
- (10) A business association.

The term includes all wholly-owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exist for profit making purposes.

Sec. 4. As used in this chapter, "complicit" means taking any actions during the preceding twenty (20) month period that directly supports or promotes the genocidal campaign in the Darfur region of Sudan, including any of the following:

- (1) Preventing Darfur's victimized population from communicating with each other.
- (2) Encouraging Sudanese citizens to speak out against an internationally approved security force in Darfur.
- (3) Actively working to deny, cover up, or alter the record on human rights abuses in Darfur.

Sec. 5. As used in this chapter, "direct holdings" means all securities of company held directly by the fund or in an account in which the fund owns all shares or interests.

Sec. 6. As used in this chapter, "government of Sudan" refers to the government in Khartoum, Sudan, that is led by the National Congress Party (formally known as the National Islamic Front) or any successor government.

Sec. 7. As used in this chapter, "inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

Sec. 8. As used in this chapter, "indirect holdings" means all securities of a company:

- (1) held in an account or a fund;
- (2) managed by one (1) or more persons not employed by the fund, in which the fund owns shares or interests together with other investors not subject to this chapter.

Sec. 9. As used in this chapter, "marginalized populations of Sudan" includes the following:

- (1) The part of the population in the Darfur region that has been genocidally victimized.
- (2) The part of the population of southern Sudan victimized by Sudan's north-south civil war.
- (3) The Beja, Rashidiya, and other similarly underserved groups of eastern Sudan.

C
o
p
y



(4) The Nubian and other similarly underserved groups in Sudan's Abyei, southern Blue Nile, and Nuba mountain regions.

(5) The Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

Sec. 10. (a) As used in this chapter, "military equipment" means weapons, arms, or military defense supplies. The term includes any equipment that readily may be used for military purposes, including:

(1) radar systems; or

(2) military grade transport vehicles.

(b) The term does not include weapons, arms, or military defense supplies sold to peacekeeping forces that may be dispatched to Sudan by the United Nations or the African Union.

Sec. 11. (a) As used in this chapter, "mineral extraction activities" means the exploration, extraction, processing, transporting, or wholesale sale of elemental minerals or associated metals or oxides, including:

(1) gold;

(2) copper;

(3) chromium;

(4) chromite;

(5) diamonds;

(6) iron;

(7) iron ore;

(8) silver;

(9) tungsten;

(10) uranium; and

(11) zinc.

(b) The term includes the facilitation of mineral extraction activities, including the provision of supplies or services in support of mineral extraction activities.

Sec. 12. (a) As used in this chapter, "oil related activities" includes:

(1) the export of oil;

(2) extracting or producing oil;

(3) exploration for oil;

(4) the ownership of rights to oil blocks;

(5) refining or processing oil;

(6) transportation of oil;

(7) selling or trading of oil; or

(8) the construction or maintenance of a pipeline, a refinery,

C
o
p
y



or another oil field infrastructure.

(b) The term includes the facilitation of oil related activities, including the provision of supplies or services in support of oil related activities. The mere retail sale of gasoline and related consumer products are not considered oil related activities.

Sec. 13. As used in this chapter, "power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery. The term includes the following:

(1) Establishing power generating plants or hydroelectric dams.

(2) Selling or installing components for power generating plants or hydroelectric dams.

(3) Providing service contracts related to the installation or maintenance of power generating plants or hydroelectric dams.

Sec. 14. As used in this chapter, "research firm" means a reputable, neutral third party research firm not controlled by the fund.

Sec. 15. (a) As used in this chapter, "scrutinized company" means a company that meets any of the following criteria:

(1) The company:

(A) has business operations that involve contracts with or the provision of supplies or services to:

(i) the government of Sudan;

(ii) companies in which the government of Sudan has any direct or indirect equity share;

(iii) consortiums or projects commissioned by the government of Sudan; or

(iv) companies involved in consortiums or projects commissioned by the government of Sudan; and

(B) has either:

(i) more than ten percent (10%) of the company's oil related activities or mineral extraction revenues or assets linked to Sudan and less than seventy-five percent (75%) of the company's oil related or mineral extracting revenues or assets linked to Sudan involve contracts with the regional government of southern Sudan, or a project or consortium created exclusively by the regional government, and the company has failed to take substantial action; or

C
o
p
y



(ii) more than ten percent (10%) of the company's revenues or assets linked to Sudan involve power production activities and less than seventy-five percent (75%) of the company's power production activities include projects that are intended to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action.

(2) The company is complicit in the Darfur genocide.

(3) The company supplies military equipment within Sudan unless the company implements safeguards to prevent the use of the equipment for military purposes.

(b) The term does not include a social development company that is not complicit in the Darfur genocide.

Sec. 16. As used in this chapter, "social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including:

- (1) medicine or medical equipment;
- (2) agricultural supplies or infrastructure;
- (3) educational opportunities;
- (4) journalism related activities;
- (5) information or information materials;
- (6) spiritual related activities;
- (7) services that are clerical or reporting in nature;
- (8) food;
- (9) clothing; or
- (10) general consumer goods that are unrelated to oil related activities, mineral extraction activities, or power production activities.

Sec. 17. As used in this chapter, "substantial action" means:

- (1) adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one (1) year and to refrain from any new business operations;
- (2) undertaking significant humanitarian efforts on behalf of one (1) or more marginalized populations of Sudan; or
- (3) materially improving conditions for the genocidally victimized population in Darfur through the government of Sudan.

Sec. 18. (a) Not later than March 30, 2008, the board shall make a good faith effort to identify all scrutinized companies in which the fund has direct or indirect holdings.

(b) The board may contract with a research firm or firms to implement this section.

C
o
p
y



(c) The board or research firm shall take all of the following actions:

(1) Review publicly available information regarding companies with business operations in Sudan.

(2) Contact other institutional investors that invest in companies with business operations in Sudan.

(3) Contact asset managers contracted by the fund that invest in companies with business operations in Sudan.

(d) Not later than the first meeting of the board after March 30, 2008, the board shall compile the names of all scrutinized companies into a scrutinized company list and indicate whether the scrutinized company has active or inactive business operations in Sudan.

(e) The board shall update the scrutinized company list on a quarterly basis based on evolving information from sources described in subsection (c).

Sec. 19. After the board creates or updates the scrutinized company list under section 18 of this chapter, the board shall immediately determine the companies on the scrutinized companies list in which the fund owns direct or indirect holdings.

Sec. 20. (a) The fund shall send a written notice of this chapter to each company with only inactive business operations identified in section 19 of this chapter and encourage the company to continue to refrain from initiating active business operations in Sudan until the company is able to avoid scrutinized business operations.

(b) The fund shall continue to correspond with companies with inactive business operations on a semiannual basis.

Sec. 21. The fund shall send a written notice of this chapter to each company with active business operations identified in section 19 of this chapter and indicate that the company may become subject to divestment by the fund. The notice shall offer the company the opportunity to clarify its Sudan related activities and encourage the company, within ninety (90) days after the date of the written notice, to either:

(1) cease its scrutinized business operations; or

(2) convert those operations to inactive business operations in order to avoid qualifying for divestment by the fund.

Sec. 22. If, within ninety (90) days after the fund's first engagement with a company under section 21 of this chapter, the company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list.

**C
o
p
y**



1 **Sec 23. (a) Except as provided in sections 25 and 26 of this**
 2 **chapter, if, after ninety (90) days after the fund's first engagement**
 3 **with a company under section 21 of this chapter, the company**
 4 **continues to have scrutinized active business operations, the fund**
 5 **shall sell, redeem, divest, or withdraw all publicly traded securities**
 6 **of the company as follows:**

7 **(1) At least fifty percent (50%) of such assets shall be removed**
 8 **from the fund's assets under management within nine (9)**
 9 **months after the company's appearance on the scrutinized**
 10 **companies list.**

11 **(2) One hundred percent (100%) of such assets shall be**
 12 **removed from the fund's assets under management within**
 13 **fifteen (15) months after the company's appearance on the**
 14 **scrutinized companies list.**

15 **(b) If a company that ceased scrutinized active business**
 16 **operations following engagement under section 21 of this chapter**
 17 **resumes scrutinized active business operations, the company shall**
 18 **immediately be placed back on the scrutinized business list. The**
 19 **fund shall sell, redeem, divest, or withdraw all publicly traded**
 20 **securities as provided under subsection (a) based on the date the**
 21 **company is placed back on the scrutinized company list. The fund**
 22 **shall send a written notice to the company indicating that the**
 23 **company was placed back on the scrutinized business list and is**
 24 **subject to divestment.**

25 **Sec. 24. Except as provided in sections 25 and 26 of this chapter,**
 26 **the fund shall not acquire securities of companies on the**
 27 **scrutinized companies list that have active business operations.**

28 **Sec. 25. If the government of the United States affirmatively**
 29 **declares any company on the scrutinized company list with active**
 30 **business operations in Sudan to be excluded from any federal**
 31 **sanctions relating to Sudan, the company is not subject to**
 32 **divestment or investment prohibition under this chapter.**

33 **Sec. 26. (a) Notwithstanding any provision to the contrary,**
 34 **sections 23 and 24 of this chapter do not apply to indirect holdings**
 35 **in actively managed investment funds. However, the fund shall**
 36 **submit letters to the managers of such investment funds containing**
 37 **companies with scrutinized active business operations requesting**
 38 **that the managers remove the scrutinized companies with active**
 39 **business operations from the fund or create a similar actively**
 40 **managed fund with indirect holdings without scrutinized**
 41 **companies with active business operations. If the manager creates**
 42 **a similar fund, the fund shall replace all applicable investments**

C
O
P
Y



with investments in the similar fund in a period consistent with prudent investing standards.

(b) For purposes of this chapter, private equity funds are considered to be actively managed investment funds.

Sec. 27. (a) On or before November 1 of each year, the board shall submit a report in an electronic format under IC 5-14-6 to the legislative council for distribution to the members of the general assembly.

(b) The report must include at least the following information:

(1) A copy of the scrutinized company list.

(2) A summary of correspondence with companies engaged by the fund under sections 20 and 21 of this chapter.

(3) All investments sold, redeemed, divested, or withdrawn in compliance with section 23 of this chapter.

(4) All prohibited investments under section 24 of this chapter.

(5) Any progress made under section 26 of this chapter.

Sec. 28. This chapter expires on the earliest of the following:

(1) Twelve (12) months after the date the government of Sudan halts the genocide in Darfur as determined by the Congress of the United States and the United States Department of State.

(2) The date the United States revokes its current sanctions against Sudan.

(3) The date Congress or the President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of foreign policy for the United States.

(4) The date Congress or the President of the United States declares that the government of Sudan:

(A) has honored its commitments to cease attacks on civilians;

(B) demobilizes and demilitarizes the Janjaweed and associated militias;

(C) grants free and unfettered access for deliveries of humanitarian assistance; and

(D) allows for the safe and voluntary return of refugees and international displaced persons.

Sec. 29. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies on the scrutinized companies list, the fund shall be

C
o
p
y



1 exempt from any conflicting statutory or common law obligations,
 2 including any obligations in respect to choice of asset managers,
 3 investment funds, or investments for fund securities portfolios.

4 **Sec. 30. (a)** Notwithstanding any provision to the contrary, the
 5 fund shall be permitted to cease divesting and to reinvest in certain
 6 scrutinized companies on the scrutinized company list with active
 7 business operations in Sudan if clear and convincing evidence
 8 shows that the value for all assets under management by the fund
 9 becomes equal to or less than ninety-nine and five-tenths percent
 10 (99.5%) of the value of all assets under management by the fund,
 11 including the companies divested under section 23 of this chapter.

12 **(b)** As provided by this section, any cessation of divestment or
 13 reinvestment shall be strictly limited to the minimum steps
 14 necessary to avoid the contingency set forth in subsection (a).

15 **(c)** For any cessation of divestment, reinvestment, and
 16 subsequent ongoing investment authorized by this section, the fund
 17 shall submit a report in an electronic format under IC 5-14-6 to the
 18 legislative council for distribution to the members of the general
 19 assembly in advance of any initial reinvestment. The report shall
 20 be updated annually thereafter as applicable, setting forth the
 21 reasons and justification for the decision to cease divestment,
 22 reinvest, or remain invested with companies with scrutinized active
 23 business operations. This section does not apply to companies that
 24 have ceased to have scrutinized business operations.

25 **Sec. 31.** The provisions of this chapter are severable in the
 26 manner provided in IC 1-1-1-8(b).

27 **SECTION 2.** IC 5-10.3-5-3 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) **Except as**
 29 **provided under IC 5-10.2-9-29**, the board shall invest its assets with
 30 the care, skill, prudence, and diligence that a prudent person acting in
 31 a like capacity and familiar with such matters would use in the conduct
 32 of an enterprise of a like character with like aims. The board shall also
 33 diversify such investments in accordance with prudent investment
 34 standards, subject to the limitations and restrictions set forth in
 35 IC 5-10.2-2-18.

36 **(b)** The board may invest up to five percent (5%) of the excess of its
 37 cash working balance in debentures of the corporation for innovation
 38 development subject to IC 30-4-3-3.

39 **(c)** The board is not subject to IC 4-13, IC 4-13.6, and IC 5-16 when
 40 managing real property as an investment. Any management agreements
 41 entered into by the board must ensure that the management agent acts
 42 in a prudent manner with regard to the purchase of goods and services.

C
o
p
y



1 Contracts for the management of investment property shall be
 2 submitted to the governor, the attorney general, and the budget agency
 3 for approval. A contract for management of real property as an
 4 investment:

5 (1) may not exceed a four (4) year term and must be based upon
 6 guidelines established by the board;

7 (2) may provide that the property manager may collect rent and
 8 make disbursements for routine operating expenses such as
 9 utilities, cleaning, maintenance, and minor tenant finish needs;

10 (3) must establish, consistent with the board's duty under
 11 IC 30-4-3-3(c), guidelines for the prudent management of
 12 expenditures related to routine operation and capital
 13 improvements; and

14 (4) may provide specific guidelines for the board to purchase new
 15 properties, contract for the construction or repair of properties,
 16 and lease or sell properties without individual transactions
 17 requiring the approval of the governor, the attorney general, the
 18 Indiana department of administration, and the budget agency.
 19 However, each individual contract involving the purchase or sale
 20 of real property is subject to review and approval by the attorney
 21 general at the specific request of the attorney general.

22 (d) Whenever the board takes bids in managing or selling real
 23 property, the board shall require a bid submitted by a trust (as defined
 24 in IC 30-4-1-1(a)) to identify all of the following:

25 (1) Each beneficiary of the trust.

26 (2) Each settlor empowered to revoke or modify the trust.

27 SECTION 3. IC 5-10.4-3-10, AS ADDED BY P.L.2-2006,
 28 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2007]: Sec. 10. (a) **Except as provided under**
 30 **IC 5-10.2-9-29**, The board shall invest its assets with the care, skill,
 31 prudence, and diligence that a prudent person acting in a like capacity
 32 and familiar with such matters would use in the conduct of an
 33 enterprise of a like character with like aims. The board also shall
 34 diversify investments in accordance with prudent investment standards,
 35 subject to the limitations and restrictions set forth in IC 5-10.2-2-18.

36 (b) The board may:

37 (1) make or have investigations made concerning investments;
 38 and

39 (2) contract for and employ investment counsel to advise and
 40 assist in the purchase and sale of securities.

41 (c) The board is not subject to IC 4-13, IC 4-13.6, or IC 5-16 when
 42 managing real property as an investment. A management agreement

C
o
p
y



1 entered into by the board shall ensure that the management agent acts
 2 in a prudent manner regarding the purchase of goods and services.
 3 Contracts for the management of investment property shall be
 4 submitted to the governor, the attorney general, and the budget agency
 5 for approval. A contract for the management of real property as an
 6 investment:

7 (1) may not exceed a four (4) year term and must be based upon
 8 guidelines established by the board;

9 (2) may provide that the property manager may collect rent and
 10 make disbursements for routine operating expenses, such as
 11 utilities, cleaning, maintenance, and minor tenant finish needs;

12 (3) shall establish, consistent with the board's duty under
 13 IC 30-4-3-3(c), guidelines for the prudent management of
 14 expenditures related to routine operation and capital
 15 improvements; and

16 (4) may provide specific guidelines for the board to:

17 (A) purchase new properties;

18 (B) contract for the construction or repair of properties; and

19 (C) lease or sell properties;

20 without individual transactions requiring the approval of the
 21 governor, the attorney general, the Indiana department of
 22 administration, and the budget agency. However, each individual
 23 contract involving the purchase or sale of real property is subject
 24 to review and approval by the attorney general at the specific
 25 request of the attorney general.

26 (d) Whenever the board takes bids in managing or selling real
 27 property, the board shall require a bid submitted by a trust (as defined
 28 in IC 30-4-1-1(a)) to identify all the following:

29 (1) Each beneficiary of the trust.

30 (2) Each settlor empowered to revoke or modify the trust.

C
o
p
y

